

Brigham Young University Law School BYU Law Digital Commons

Utah Supreme Court Briefs

2001

Alma Glenn Pratt v. Board of Education of the Uintah County School District : Response to Petition for Rehearing

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

George A. Hunt; Merlin R. Lybert; Martineau, Snow and Christensen; Attorneys for Appellant.
Michael T. McCoy; Attorneys for Respondent.

Recommended Citation

Legal Brief, *Pratt v. Board of Education of the Uintah County School District*, No. 14469.00 (Utah Supreme Court, 2001).
https://digitalcommons.law.byu.edu/byu_sc2/1517

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFU
45.9
.S9
DOCKET NO.

UTAH SUPREME COURT

BRIEF

14469 R R H

IN THE SUPREME COURT
OF THE STATE OF UTAH

ALMA GLENN PRATT,

Plaintiff and
Respondent,

vs.

Case # 14469

BOARD OF EDUCATION OF THE
UINTAH COUNTY SCHOOL DISTRICT,

Defendant and
Appellant.

BRIEF OF RESPONDENT
IN ANSWER TO
PETITION FOR RE-HEARING

Michael T. McCoy, Esq.
414 Walker Bank Building
Salt Lake City, Utah 84111
Attorneys for Respondent

SNOW, CHRISTENSEN & MARTINEAU
Merlin R. Lybbert, Esq. and
George A. Hunt, Esq.
700 Continental Bank Building
Salt Lake City, Utah 84101
Attorneys for Appellant-Petitioner

IN THE SUPREME COURT
OF THE STATE OF UTAH

ALMA GLENN PRATT,

Plaintiff and
Respondent,

vs.

Case # 14469

BOARD OF EDUCATION OF THE
UINTAH COUNTY SCHOOL DISTRICT,

Defendant and
Appellant.

BRIEF OF RESPONDENT
IN ANSWER TO
PETITION FOR RE-HEARING

Michael T. McCoy, Esq.
414 Walker Bank Building
Salt Lake City, Utah 84111
Attorneys for Respondent

SNOW, CHRISTENSEN & MARTINEAU
Merlin R. Lybbert, Esq. and
George A. Hunt, Esq.
700 Continental Bank Building
Salt Lake City, Utah 84101
Attorneys for Appellant-Petitioner

TABLE OF CONTENTS

	<u>Page</u>
NATURE OF THE CASE	1
DISPOSITION IN LOWER COURT	2
ADDITIONAL STATEMENT OF FACTS	3,4,5
ARGUMENT	6
POINT A:	
THE UTAH ORDERLY SCHOOL TERMINATION PROCEDURES ACT <u>1</u> / PROVIDES A METHOD OF "NOTICE" OF A CLAIM AGAINST THE APPELLANT THAT FULLY MEETS THE REQUIREMENTS OF THE GOVERNMENTAL IMMUNITY ACT, <u>2</u> / AND IS A SUBSTITUTE THEREFORE.	6
POINT B:	
THE UTAH ORDERLY SCHOOL TERMINATION PROCEDURES ACT IS A REMEDIAL AND PROCEDURAL ACT AND THERE- FORE OPERATES RETROSPECTIVELY.	7
POINT C:	
STIPULATIONS BY COUNSEL PRIOR TO TRIAL IN NO WAY EFFECT THIS CASE	10
CONCLUSION.	11

CASES CITED

<u>Abrams v. Stone</u> , 154 C.A.2d 33, 315 P.2d 453 (1957)	8
<u>Board of Regents v. Roth</u> , 408 U.S. 564 (1972)	8,9
<u>Johnson v. Beneficial Management Corporation of Amer- ica</u> , 538 p.2d 510 (Wash. 1975).	8
<u>Perry v. Sinderman</u> , 408 U.S. 593 (1972)	8,9
<u>Tellier v. Edwards</u> , 354 p.2d 925 (Wash. 1960)	8

Statutes Cited

	<u>Page</u>
Utah Code Annotated, Section 53 §-6-20, (Supp. 1975).	6
Utah Code Annotated, Section 53 §-50-1 et seq., (Supp. 1975)	6
Utah Code Annotated, Section 63 §-30-13, (1953) . . .	6

Treatises Cited

82 CJS, <u>Statutes</u> , §§416 & 421	8
---	---

IN THE SUPREME COURT
OF THE STATE OF UTAH

ALMA GLENN PRATT,

Plaintiff and
Respondent,

vs.

Case No. 14469

BOARD OF EDUCATION OF THE
UINTAH COUNTY SCHOOL DISTRICT,

Defendant and
Appellant.

BRIEF OF RESPONDENT
IN ANSWER TO
PETITION FOR RE-HEARING

NATURE OF THE CASE

This is an action for breach of contract arising out of Appellant's failure to renew Respondent's contract of employment with it. Respondent seeks reinstatement as a teacher with Appellant and damages for breach of contract including all rights and benefits which he would have received had he not been improperly terminated by Appellant.

DISPOSITION IN LOWER COURT

This action was tried to a jury on December 10, 1975, at Vernal, Utah, before the Honorable J. Robert Bullock, Judge. By stipulation of the parties, the question presented to the jury was whether or not Respondent resigned his position of employment with Appellant. By Special Verdict, the jury found that Respondent had not resigned his position of employment. The Court entered judgment against Appellant on January 28, 1976 awarding Respondent \$18,070.03 in damages and further ordered Appellant to reinstate Respondent as a teacher together with all rights and benefits he would have received had he not been terminated contrary to the terms of his contract of employment with Appellant.

The Appellant timely appealed the decision of the district court on February 11, 1976. The issues were briefed and this Court heard argument on October 12, 1976.

In an opinion filed May 4, 1977, this Court affirmed the judgment of the district court in favor of the Respondent. Appellant petitioned for re-hearing May 24, 1977 and that petition was granted.

ADDITIONAL STATEMENT OF FACTS

The facts of this case are more fully set forth in the Brief's previously filed with the Court. Appellant has cited a portion of the trial transcript in support of its contention that Respondent's stipulation (1) entitled Appellant to have the case dismissed as a matter of law; and (2) caused it not to assert the defense that it terminated (fired) Respondent before May 11, 1973, the date the Utah Orderly School Termination Procedures Act became effective.

To Appellant's citation of the record must be added the following:

The Court:

Now Mr. Lybbert, you had a matter that you asked Mr. Dibblee to stipulate regarding, and Mr. Dibblee indicated that he didn't see any reason why not--go ahead.

Mr. Lybbert:

I understand that the plaintiff is willing to stipulate that they have not preceeded or intended to proceed under the Utah Governmental Immunity Act and have not attempted nor have they complied with the notice provisions of that act.

Mr. Dibblee:

I understand that's correct.

Mr. Lybbert:

No. 2: I understand from our previous conversation that you are not making any claim under the provisions of the Utah Orderly School Termination Procedures Act, Section 53-51-1, et seq.

Mr. Dibblee:

That's correct.

The Court:

So whether or not the plaintiff is entitled to recover, again, is dependant upon the Jury's verdict as to whether or not there was a dismissal or a resignation.

Mr. Dibblee:

That's correct, sir. Tr. p.2.

Counsel for the Appellant does not object to the Court's analysis of the issues at that time, or at any other time during the trial. Again, at page four of the transcript the Court states:

The Court:

Well, there is a question of fact though, isn't there; whether he was dismissed or whether he resigned? Isn't that a question of fact under the evidence that you intend to present, both of you?

Mr. Lybbert:

(Nodded his head.)

Mr. Dibblee:

Well, the defendant of course claims there was a resignation.

In his opening statement to the jury, counsel for Appellant stated:

As I see it, the central issue is whether or not Mr. Pratt advised Mr. Evans in the spring of '73 that he didn't wish to have his contract renewed with the District. That's the case. Tr. p.22.

Appellant however, argues that because of Mr. Dibblee's statements regarding the Utah Orderly School Termination Procedures Act, it did not present evidence regarding "a significant factual issue...over the actual date upon which Respondent was terminated. Respondent then suggests that there was a dis-

agreement as to whether plaintiff was notified April 27, or May 11, 1977 that his contract of employment would not be renewed.

In so framing the issue, Appellant is misleading. The issue throughout the trial and the one on which Appellant based its defense was that Respondent resigned. The sole issue submitted to the jury was whether or not Respondent resigned. The jury found that Respondent did not resign. It makes little difference which date Respondent did not resign as he continued his employment until the end of the school year, several weeks after the Utah Orderly School Termination Procedures Act became effective.

Apparently Appellant now asks this Court to permit it to retry the case on a theory inconsistent with its representations to the trial court and to the jury.

Moreover, even after Mr. Dibblee's stipulations to the Court, the trial court considered the question of dismissal to be a possible issue in the case. Tr. pp.2 and 4. Counsel for Appellant did not object to the trial courts characterization of the issue until this appeal.

Presumably, Appellant now seeks to retry this case on the basis that it unlawfully breached Respondent's contract of employment prior to May 11, 1973 when the Utah Orderly School Teacher's Termination Procedures Act became effective and then assert Respondent's failure to file notice as provided in section 6 §-30-13 of the Governmental Immunity Act as a defense.

ARGUMENT

A. THE UTAH ORDERLY SCHOOL TERMINATION PROCEDURES ACT^{1/} PROVIDES A METHOD OF "NOTICE" OF A CLAIM AGAINST THE APPELLANT THAT FULLY MEETS THE REQUIREMENTS OF THE GOVERNMENTAL IMMUNITY ACT,^{2/} AND IS A SUBSTITUTE THEREFORE.

In its Brief on appeal Respondent urged this Court to find that the procedural administrative remedies set forth in the Utah Orderly School Termination Procedures Act are in lieu of or a substitute for the notice requirements of section 63-30-13 of the Governmental Immunity Act. This Court held that Plaintiff's failure to file a notice of claim, within ninety days after May 11, 1973, did not bar his claim. Respondent's arguments in support of his position appear at pages 10 through 18 of his initial Brief and need not be repeated. This court further held that Respondent's claim did not mature until September 25, 1973 after the Board of Education held the hearing requested by Respondent and on that date issued its written determination. This Court was correct in ruling that Respondent's claim did not mature until September 25, 1973 for two reasons. First, section 53-6-20, Utah Code Annotated (Supp.1975) vests in the board of education of each school district the power to operate, control and maintain the school system and to "adopt bylaws and rules for its own procedure and make and enforce rules and regulations for the control and management of the public schools of the district." As the Board is vested with the power to control the school district and it granted the Respondent an opportunity to appear before it before a final decision was made to terminate him, his cause of

^{1/} Sections 53-50-1 et seq., Utah Code Annotated (Supp.1975).

^{2/} Section 63-30-13, Utah Code Annotated (1953).

action did not arise until the board took action--September 25, 1973. The second reason the Utah Orderly School Termination Procedures Act applies is below set forth.

B. THE UTAH ORDERLY SCHOOL TERMINATION PROCEDURES ACT IS A REMEDIAL AND PROCEDURAL ACT AND THEREFORE OPERATES RETROSPECTIVELY.

Appellant now represents to this Court that for Mr. Dibblee's "stipulation," it would have argued to the trial court that Mr. Evans terminated Respondent before the effective date of the Utah Orderly School Termination Procedures Act, presumably April 27, 1973 instead of May 11, 1973. Whichever date the "event" took place, the procedural administrative remedies of the Utah Orderly School Teachers Termination Procedure Act apply for the reason that procedural and remedial acts operate retrospectively as well as prospectively.

. . . remedial or procedural statutes which do not create, enlarge, diminish, or destroy contractual or vested rights but relate only to remedies or modes of procedure are not within the general rule against retrospective operation but are generally held to operate retrospectively. Such statutes will not be given retrospective operation if to do so would impair contractual obligation or serve vested rights, unless the language of the statute indicates that such is the legislative intent.

While it has been held that a remedial statute will not be given retrospective or retroactive operation unless the legislative intent appears on the face of the statute, expressly, by plain and positive language, or by necessary implication, the rule that, unless the language of the statute so requires, the statute should not be given retrospective or retroactive operation has been held not to apply to purely remedial laws,

unless an intent to the contrary is shown; and a remedial statute is to be construed to give effect the purpose for which it was enacted, and, if the reason of the statute extends to the past transactions as well as those in the future, it will be so applied, although it does not, in terms, so direct, unless to do so would impair some vested right or violate some constitutional guarantee. 82 CJS, Statutes, §416; See also 82 CJS, Statutes, §421.

A statute is remedial and has retroactive application when it relates to practice, procedure or remedies and does not affect a substantive or vested right. Johnson v. Beneficial Management Corporation of America, 538 p.2d 510 (Wash. 1975); Tellier v. Edwards. 354 P.2d 925 (Wash. 1960).

In the construction of remedial statutes, regard must always be had for the evident purpose for which the statute was enacted, and if the reason of the statute extends to past events as well as those in the future, it will be so applied, even though the statute does not specifically so direct, unless, of course, to construe a statute retrospectively would impair some vested right or impinge on a constitutional guaranty. Abrams v. Stone, 154 C.A.2d 33, 315 P.2d 453 (1957).

Respondent submits that the Utah Orderly School Termination Procedures Act was enacted as remedial legislation to afford educators procedural due process against harsh, arbitrary or unlawful conduct by a capricious supervisor or superintendent. No doubt it was also a response to Perry v. Sindermann, 408 U.S. 593 (1972) and Board of Regents v. Roth, 408 U.S. 564 (1972) wherein the Court held that an individual employed by a unit of

government that had a reasonable expectation of continued employment or a contractual right to employment, cannot be deprived of that right without being afforded procedural due process as required by the Fourteenth Amendment to the Constitution of the United States.

A written contract with an explicit tenure provision clearly is evidence of a formal understanding that supports a teacher's claim of entitlement to continued employment unless sufficient "cause" is shown... Perry v. Sindermann, at 408 U.S. 601.

The Fourteenth Amendment's procedural protection is a safeguard of the security of interests that a person has already acquired in specific benefits. Board of Regents v. Roth at 408 U.S. 575.

It is the purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is the purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims. Id. at 577.

Initially, Mr. Evans maintained that Respondent's contract and "tenure" were with the school that was closed. Later, he took the position that Respondent resigned. Now, Appellant wants to argue that Respondent was terminated. The jury found that Respondent did not resign. Respondent's contract of employment clearly gave him a contract right to continued employment. If he were terminated, it is submitted that under the doctrines developed in Perry and Roth, Respondent had a constitutional right to procedural due process and therefore, a fair hearing. The Utah Orderly School Teacher

Termination Procedures Act merely prescribes the procedure for procedural due process. As such, the statute has retrospective application.

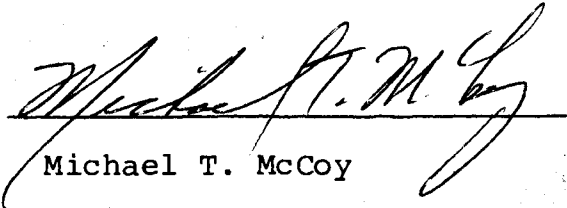
C. STIPULATIONS BY COUNSEL PRIOR TO
TRIAL IN NO WAY EFFECT THIS CASE.

For the reasons above stated, the stipulation made by counsel for Respondent prior to trial in no way effect the basis upon which the Court has decided this case. It must here be noted that Appellant's representation to this Court that, "There has never been so much as a suggestion either in the trial transcript, at post-trial hearings, in the Respondent's brief on appeal or in the arguments before this Court, that the stipulation did not accurately set forth the agreement of the parties", is misleading. Both at post-trial hearings and at page 11 of Respondent's brief, Respondent has maintained that Mr. Dibblee's stipulation went only to the claim of procedural due process. That is what the act requires. The board granted the hearing and made its decision. No claim was thereafter asserted that the district had failed to comply with it's requirements. Respondent submits that the purpose of the notice requirement in the Governmental Immunity Act is to give a public body notice of a claim before it results in litigation. (See pages 16 and 17 of Respondent's initial Brief.) The request for hearing and hearing provision's of the Utah Orderly School Termination Procedures Act fully satisfies the notice requirements of the Governmental Immunity Act. (See pages 10 through 18 of Respondent's initial Brief.)

CONCLUSION

Respondent respectfully requests this Court re-affirm it's earlier decision entered in this matter. In the event this Court grants Appellant's request for a new trial, Respondent requests that the new trial be limited to only those issues of fact not already decided by the jury in this case.

Respectfully submitted this 23 day of June, 1977.


Michael T. McCoy

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief were mailed, postage prepaid, to counsel for Appellant, Merlin R. Lybbert, 700 Continental Bank Building, Salt Lake City, Utah 84101, this 24 day of June, 1977.

